

ACC

10000/142/700

10000/142/700

USTICA HEARINGS
OCT. 1943 - OCT. 1944

SECRET

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

/rlp.
19 September 1944.

ACC/4027/4/1.

SUBJECT : Proclamation No. 1.

TO : VP. Admin Sec.

Confidential

1. The second paragraph of the preamble to Proclamation No. 1 reads as follows,

"Much of this territory has already been restored to the jurisdiction of the Italian Government and it is the intention that all territory freed from German domination shall be restored as soon as possible, to the jurisdiction of the Italian Government."

2. Exception has been taken to the use of the word "all" in the second line as possibly inferring an intention to restore all Italian territory recovered from the Germans, whereas more recent public statements have thrown some doubt on this as to some of the territory in the northeast.

3. This preamble was prepared by this sub-commission and approved by the Political Section before the proclamation was signed in the revised form.

4. I understand that Proclamation No. 1 has been printed--40,000 copies--but not distributed. These copies are ready for shipment now.

5. If the word "all" were blocked out entirely or if there were a complete reprinting and the word "additional" were substituted for "all", the question would be answered. Of course the Italian corresponding words would have to be dealt with in the same way.

6. Whether or not the posting of the proclamation with the word "all" contained would give rise to political repercussions, I could not say. Certainly it would have no legal force at all as the word is used in a clause expressing intention only, even if a proclamation could be considered as having any legal effect in a matter of this kind.

7. Please advise me if any change is to be made.

DOWN GRADED
TO
UNCLASSIFIED

RICHARD H. WILMER,
Colonel, GAC,
Chief Legal Officer.

Col. Inf.
Officer.
Chief
for Chief

43

SECRET

HEADQUARTERS

ALLIED CONTROL COMMISSION

Legal Sub-Commission

AWO 394

RWW/jpl

ACC/4083/40/L

24 Sept. 44

Subject: Case of MASIN LINO

To : A/Chief Commissioner, HQ. ACC

1. The above named accused was convicted of espionage and attempting to communicate with the enemy and was given a death sentence on each of these two charges. The Court was unanimous on conviction and sentence. Another charge of actually communicating with enemy was dismissed, there being no evidence to support it.

2. The accused long prior to our entry into Rome had been employed there by the Germans for training in espionage and radio transmission work. Later he went north for more training. About 11 or 12 July 1944 he was dropped by plane near Castelforte not far from Cassino. According to his confession which appears without question to have been freely and voluntarily given (Flag B) he hid his parachute and radio transmission set and then proceeded to Rome where he endeavored to get in touch with his confederate to whom he was to report, the latter being then reported as having gone to Bari. The accused stated that he had been instructed to join one of the liberal parties which might afford a screen for him. He was under instructions to secure and transmit military and political information. The accused did meet some Communists and did state to them what his mission was. He was arrested some days later. He said that through this party affiliation he intended later to report to the Allies having concluded to give up his mission. According to his confession he was paid very substantial sums by the Germans for his work.

3. Some days after his arrest he took allied security agents to the place where he claimed he had landed, but the parachute and radio were not found there. A piece of cotton endpiece of cotton were picked up there and he said these had been with the transmission set when he left it.

4. The accused did not testify in the case and on the conclusion of the prosecution's case his counsel moved to dismiss on the ground that no case had been made by the prosecution. This motion was denied as to two of the charges in which he was convicted. No appeal has been filed and the time for filing an appeal has now elapsed.

5. It is abundantly clear that the accused was carefully trained for his mission by the Germans for a long period of time and unless it could be said that his statement of his mission to the Communists who he approached without their requesting that he be taken forthwith to the Allied Authorities was to be taken as evidence of giving up his mission there is no evidence to show he ever did so. The disclosure he actually made is certainly open to other interpretation. His attempt to inform the party was in accordance with instructions given him and could well have served to disarm his new companions and at the same time account for his presence on our side of the fighting line.

6. I see no reason to reverse the conviction or the sentence and recommend

actually communicating with enemy was dismissed, there being no evidence to support it.

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6. I see no reason to reverse the conviction or the sentence and recommend that they be confirmed.

7. If the conviction and sentence are to be confirmed the form attached (Flag C) should be signed. If on the other hand it is desired that other action be taken with regard either to the conviction or the sentence I will, on advice as to action to be taken, prepare the requisite form to be signed by you.

8. Flags are as follows:-

- (a) Flag "A".....Record of the Proceedings.
- (b) Flag "B".....Masin's confession
- (c) Flag "C".....Slip confirming death sentence.

RICHARD H. WILMER
Colonel, CAG
Chief Legal Officer

Letter: Head
SECRET**HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394**WFB/pa.
13 Oct 44.

ACG/1429/6/L.

SUBJECT : PAPPALARDO Giovanna.

TO : D.C.S., C A Section.

1. Herewith are attached the documents in the case of the above alleged enemy agent. HQ AAI, HQ 2 District and HQ 3 District are anxious that she be tried by an Allied Court for espionage either in Naples or in Italian Government Territory.

2. The accused is alleged to have crossed the lines about 13 June 1944, to have moved to Rome, Naples and Taranto collecting information. She reached Taranto on 11 July and was arrested there on 22 July.

3. The accused made a complete confession which, if true, shows that she was an intelligent, determined and dangerous spy.

4. Various statements have been obtained from persons in Naples, Taranto which are entirely inconsistent with the confession but do not "corroborate" it in any incriminating particular. They show that the accused gave a false reason for her journey from Naples to Bari (to which she was going from Taranto when arrested).

5. When arrested the accused had in her possession a paper showing the designs of British uniforms and APOs. She gave, however, a perfectly true and reasonably harmless explanation of this, - that it was produced by an Italian Sgt in Naples to settle an argument. She added, which is probably true, that she retained it by inadvertence.

6. There is, unfortunately, no doubt that the statement was obtained by pressure. The interviewing officer relates that he, after 6 hours questioning, pointed out "that unless she confessed she would get her cousin and her parents arrested" and that "at this stage PAPPALARDO was in a state of collapse".

7. It is felt that in these circumstances the court should refuse to accept the confession. If the confession is rejected there is no evidence to convict. Even if it is accepted under the Consolidated Regulations it is doubtful whether technically there is any "corroboration" so that even under AIC rules the accused would have to be acquitted.

8. It is to be observed that the accused can always be tried in Naples by an AMG General Court for her activities there, though para 7 will still apply. It is felt in any event that, in spite of the desires of the military authorities, a court in Italian Government Territory should be denied.

9. A draft is attached for your signature if you concur.

RICHARD H. WILNER,
Colonel, GAC,
Chief Legal Advisor.

Enclos.

SECRET

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Sub-Commission
AFC 394

ACC/4087/42/L.

/TU.

26 Sept. 44.

SUBJECT : Case of PIANDRO Carmelo.

TO : A/Chief Commissioner, H.C., ACC.

1. Enclosed herewith is the record in the case of PIANDRO Carmelo, who was convicted on three charges:

- (a) Espionage
- (b) Possession of firearms
- (c) Possession of wireless transmission set

and on each was given the sentence of death by a unanimous Court.

2. The accused worked for the Germans from the middle of October 1943 until he was arrested. He became an expert in wireless transmission and in the use of a cipher code. For his work he was paid regularly by the Germans and his name was found listed in German files left in Rome.

3. He was ordered to remain in Rome after the Germans left to transmit messages to Berlin. There was no proof that he had transmitted any messages and a fourth charge of transmission was dismissed.

4. Arms, ammunition, radio transmission set and substantial sums of money were found in his apartments.

5. A signed confession appears in the record (Flag B) and no question was raised at the trial as to its having been obtained other than by legitimate and proper means. In fact the accused did not take the stand in his own defense although he was advised of his rights in this respect. Several witnesses for the prosecution corroborated many of the important features covered by the confession.

6. An appeal has been filed by the accused (Flag C). In

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6. An appeal has been filed by the accused (flag C). In it he makes the claim for the first time that in his confession he was forced to make certain statements which were untrue, but the security agents testified on direct and cross-examination that whatever was written in the confession was written voluntarily by the accused after warning and without coercion, intimidation or intimidation. As above stated the accused did not take the stand to make any claim such as is now made in the appeal.

7. The case seems to be a clear one and I recommend

o/o

confirmation of conviction and sentence.

8. If the conviction and sentence are to be confirmed the form attached (Flag D) should be signed. If on the other hand it is desired that other action be taken with regard either to the conviction or the sentence I will, on advice as to action to be taken, prepare the requisite form to be signed by you.

9. Flags are as follows:-

- (a) Flag "A".....Record of the proceedings
- (b) Flag "B".....The signed Confession and translation
- (c) Flag "C".....Petition of appeal.
- (d) Flag "D".....Slip confirming death sentence.

Enc. 1 Record.

RICHARD H. WILMER,
Colonel, SAC,
Chief Legal Officer.

83

SECRET

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4014/9/L.

/rlp.
4 October 1944.

MINUTES OF CONFERENCE HELD AT HEADQUARTERS UPJO IN HIS OFFICE
3 OCTOBER 1944.

PRESENT: Brig. G. R. Upjohn, K.C.
Colonel R. H. Wilmer
Colonel N. K. Behrens
Lt. Col. A. R. Thackrah
Mr. Frothingham
Mr. Hofland

Mr. Frothingham referred to a conference held with Mr. Antolini on 2nd October and said that he and Mr. Hofland had been disturbed by the statement made there by Colonel Wilmer to the effect that ACC did not regard the English and American oil interests in Italy as Allied interests to be protected by ACC. Colonel Wilmer stated that he had always given the advice which he had repeated to Mr. Antolini at the conference which was to the effect that the assets concerned had been nationalized by a valid Italian law and that in his opinion the property was now Italian owned. The Allied interests which required protection were confined to the bank accounts which could, if necessary, be blocked. Any question of other compensation must be determined through the peace treaty.

Brig. Upjohn stated that this had been the position adopted in Sicily. At that time, the Director of Property Control had taken oil properties in Sicily into custody, but on the footing that they were enemy state properties and not because they were Allied properties. When Italy became a belligerent the policy of taking custody of enemy state property as such had ceased. Later, on instructions by ARHQ, the property had been handed over to Petroleum Section and since that date the Property Controller had no interest therein. At a conference in February between himself as CIO and the Director of Property Control, and Messrs. Frothingham and Hofland, it had been agreed that the Director of Property Control would refrain from concerning himself in petrol companies.

Mr. Frothingham then stated that the petroleum companies had very considerable interests which the Allied governments required to be protected. In particular, their personnel was most important to them. AGIP, 80% of whose interest consisted in Allied interests nationalized as above, was in a position to do considerable harm to the interests of the Petroleum company. In fact, they had already dismissed several of their employees. It was essential that a commissario be appointed for AGIP, and the most satisfactory solution for this commissario appeared to him to be the appointment of the CIP committee.

PRESENT: Brig. G. R. Upjohn, K.C.
Colonel R. H. Wilmer
Colonel W. K. Behrens
Lt. Col. A. R. Thacker
Mr. Frothingham
Mr. Holland

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Brig. Upjohn enquired, precisely what advice he was being asked to give and Mr. Frothingham then asked whether ACC concerned themselves with Allied interests. Brig. Upjohn answered that the question was too general. That the only direct protection of Allied property with which ACC was concerned was organized through the Director of Property Control, but the DPC, as stated, had agreed not to take custody of petrol companies, as the entire matter was being handled by Petroleum Section, ARHQ.



0426

the purely legal aspect. They had advised and would stand by that advice, that under the Armistice terms there was a right to force this appointment on the government; the desirability of doing so was a matter of policy, which lay outside the sphere, in this particular case, of the Civil Affairs Section, AOC. Brig. Upjohn pointed out that Messrs. Frothingham and Hefland were on the staff of AFHQ and they should consult that body with regard to the question of policy.

Copies to: Brig. Upjohn
Mr. Antelini

DOWN GRADED
TO
UNCLASSIFIED

Col. H. H.
Chief Judicial Officer,
Chief of Staff
for Chief of Staff

SECRET

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4102/2/L.

WEB/ap.

6 October 1944.

SUBJECT : Movement Control.

TO : Deputy Chief of Staff, Civil Affairs Section.

1. We have considered the questions raised by your
6/AB/C.A. of 5 Oct 1944.

2. We are of opinion that the rights of the Commander-in-Chief to control civilian movement between Italian Government territory and countries outside Italy are limited to the rights specifically conferred by the Short Terms of Armistice, the Long Terms of Armistice and the various Terms of Restoration; and that as no such additional right is conferred by or can be deduced from the Terms of Restoration, the rights, if any, must be limited to those conferred by the Long and Short Terms of Armistice.

3. The only clauses in these Terms which may be relevant to such rights are :-

- (1) Long Terms clause 21.
"In addition to the rights in respect of occupied Italian territory described in Articles 18 to 20.

A. Members of the Land, Sea or Air Forces and officials of the United Nations will have the right of passage in or over non-occupied Italian territory and will be afforded all the necessary facilities and assistance in performing their functions.

B. The Italian authorities, will make available on non-occupied Italian territory all transport facilities required by the United Nations including free transit for their war material and supplies, and will comply with instructions issued by the Allied Commander-in Chief regarding the use and control of airfields, ports, shipping, inland transport systems and vehicles..

(ii) Long Terms clause 26.

"Italian subjects will pending further instructions be prevented from leaving Italian territory except as authorized by the Allied Commander-in Chief and will not in any event take service with any of the countries or in any of the territory of countries at war with any of the United Nations or occupied by any such country " nor will they proceed to any place for the purpose of undertaking work for any such country....."

(iii) Short Terms Clause 10.

"The Commander-in Chief of the Allied Forces reserves to himself the right to take any measure which in his opinion may be necessary for the protection of the interests of the Allied Forces for the prosecution of the war, and the Italian Government binds itself to take such administration or other action as the Commander-in-Chief may require....."

4. We are of opinion that while clause 21 appears to provide for the control of airfields and ports, such control is not intended to be so unrestricted as to extend to a power of complete denial of entry to persons wishing to use such airfields or ports. The purport of the clause is to grant to the Allied Forces an unrestricted use of transport facilities for the benefit of United Nations personnel, and war material and supplies unless the entry of persons into those ports or airfields is of such a nature as to interfere with the transport of the United Nations personnel or the war material or supplies, the clause does not in our opinion confer a right to control such entry.

5. We are of opinion that clause 26 does confer a right to prevent egress from Italian territory, but this right only applies against Italian citizens. We do not think that the restoration of territory to the Italian Government in any way operates as a further instruction nor as an authority by the Allied Commander-in Chief within the meaning of that clause. Nor do we think that the introduction of further prohibitions concerning enemy or enemy occupied territories in any way limits the express directive contained in the early part of the clause.

6. We are of opinion that under clause 20 of the Short Terms the Commander-in-Chief has the right to require the Italian Government to prohibit the movement of civilians; whether of Italian or other nationality, between countries outside Italy and Italian Government territory provided that he is of opinion that such action is necessary for the protection of the Allied Forces for the prosecution of the war; We feel therefore that before expressing a definite opinion upon the rights conferred by the clause in this case we must know whether or not the Commander-in-Chief does take the view that the continuance of the movement under consideration constitutes a hazard to the Allied Forces in the prosecution of the war against which protection is required. If he does take this view we are of opinion that the clause confers a right to require the Italian Government to prohibit this movement;

7. Save as above we are of opinion that the Commander-in-Chief has no right to interfere with the jurisdiction of the Italian Government in their control of such movement;

RICHARD H. WILMER,
Colonel, C.A.C.,
Chief Legal Advisor.

SECRET

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Sub-Commission
APO 394

/301

ACC/4083/38/L

11 Oct. 44

Subject: Case of LANCELOTTI Gino

To : Acting Chief Commissioner

1. Herewith the record of proceedings against LANCELOTTI Gino who was tried on 7 Sep 44 for espionage. He was convicted and sentenced to death; the papers are therefore submitted to you for confirmation or commutation.

2. The facts may be summarized as follows:-

- (a) on 7 Aug. 44 the accused arrived in the village of GENOVA. He stated that he had come across the lines, having crossed the Arno. He saw the Sindaco on the subject of getting a ration card and the Sindaco gave evidence that the accused could not give a good account of how he arrived. Accused said he wanted to go to Livorno to get a pass for home. He was interrogated by an American Sgt. LAMANCUSA. This interrogation was a matter of course, having crossed the Arno.
- (b) In this interrogation (Record p. 34 et seq) accused said he had come from Modena, hitch-hiking and on foot; that he had seen nothing of military interest en route; that he crossed the Arno 3 Km EAST of PISA. On account of various unsatisfactory answers and the unduly clean state of his clothing, LAMANCUSA turned over the accused to agent John MARINO C.I.D. on the same evening (7 Aug.)
- (c) On arrival at CID HQ accused was asked some preliminary questions and then put in custody, the agent saying to him he would be released "when he was willing to tell a truthful story." MARINO denied using any threat. MARINO gave evidence that the accused's clothes were in very good condition, that he was clean shaven, and that he carried no baggage or toilet articles.
- (d) On the morning of 9 Aug., accused asked to see MARINO, and immediately admitted that he had come over on a "mission" and suggested acting as double agent. As a result of questions, accused made a verbal statement to MARINO-see Record PP 9-10.
In brief, he stated that on 4 Aug. 44 he was taken from prison in MODENA and was told he must go on an espionage mission or be shot for black market activity; that he left on 6 Aug and was driven via BOLOGNA to PISTOIA; that he there went to a German HQ where he was given an Alias a password and told that he was due back in German territory between 2000 and 2030 hours 9 Aug. and his mission was to spot vehicle and unit designations on route 67 (Florence-Livorno)

- 2 -

- (e) Later on 9 Aug. he was further interrogated by another agent MESSINA; on this interrogation he told his past history and repeated the story he had told to MARINO, but in more detail - see record pp 13 - 14.
- (f) In his defence the accused affirmed that he was strongly anti-fascist; that he left the Italian Army at the front; that he evaded recall; that he went into the tobacco black market, (Oct. 43-Aug. 44) in which he made 300,000 lire; that he became involved with a woman; that he was arrested for his black marketing activities; that when he was in prison this woman's husband came and visited him and told him to choose between death or accepting a mission; that he accepted the latter, but that he did not intend to carry out the mission but to go to ROME; (Record p. 22); that the husband showed him the signs on which he was to report; that he (accused) decided to report to General DI BLASE (Rome) with information; that he then left for ROME via LIVORNO; that failing to enter LIVORNO, he returned to GENOA where he was detained.

2. As a result of the evidence, the Court held unanimously that the accused was guilty as charged and unanimously imposed the death sentence. The Court was abundantly justified in coming to such conclusion. The story for the defence was not convincing and in cross-examination the accused was caught in a serious lie; he said that he had met a "high level" agent called RASNO ILIO on 5 Aug. at MODENA, whereas this agent was already in allied hands thereby showing he was not the ingenuous black marketer which he pretended to be (see pp. 40 - 41); moreover an offer to return to German territory as a "double-agent" is not compatible with his story of fleeing from the Germans to evade punishment.

3. Petition for Review is at Flag "B".

4. I have no hesitation in recommending affirmation of the conviction.

5. As to sentence: your attention is drawn to the observations of the members of the Court which are attached to the Petition for Review: see Flags B (1), B (2) and B (3). I am not impressed by the grounds put forward by one member of the Court see Flag B (3). That same member had joined in the imposition of the death sentence at the conclusion of the trial. I advise that the death sentence be confirmed.

6. Forms for confirmation and for commutation, Flags "C" and "D", are attached for your signature. I assume that the delegation of power to you to confirm the death sentence transmitted to AHQ(G-3) will be executed and returned forthwith. To commute the death sentence to one of life imprisonment will you please sign the appropriate slip (Flag D).

7. The flags are as follows:-

Flag "A"..... record of the proceedings
 Flag "B"..... Application for review of sentence.
 Flag "B" (1), (2), & (3) Observations of judges.
 Flag "C"..... Slip confirming death sentence.
 Flag "D"..... Slip commuting death sentence.

RICHARD H. WILMER
 Colonel, GAO
 Chief Legal Adviser.

Handwritten: 0432
Handwritten: [Signature]
SECRET

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4102/3/L.

/rlp.
13 October 1944.

SUBJECT : Restoration of Territory to Italian Government.

TO : Acting Chief Commissioner.

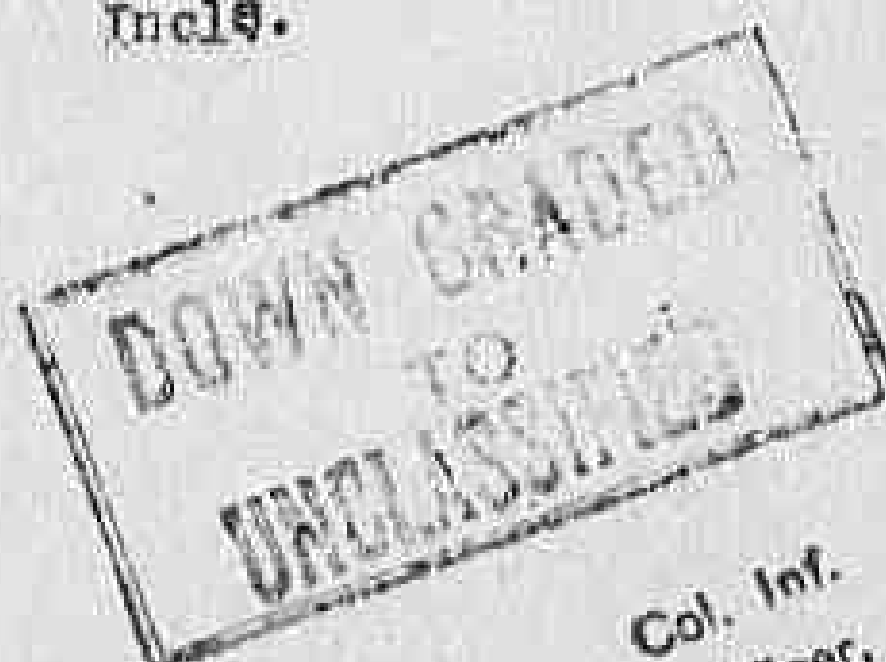
1. I am returning herewith signed originals of Documents "A", "B", and "C" executed in connection with the restoration of territory to the Italian Government jurisdiction on 16 October and also a conformed copy of these documents for your files. I understand that originals of other documents executed in connection with earlier restorations are held in your office and I think all should be kept together.

2. All arrangements have been made for the transportation and delivery and posting of the proclamations in the territory to be restored.

3. Sig. Sorrentino of the office of the President of the Council of Ministers who worked with me on these papers said that he wanted to have for future reference a copy of the documents. It is likely true that he has had difficulty in locating the Italians' copies of earlier documents. However, I think it better to transmit the conformed set to Sig. Bonomi. I have prepared and enclose a letter to carry that out and an extra set is enclosed for that purpose.

RICHARD H. WILMER,
Colonel, CAC,
Chief Legal Advisor.

Incls.



Col. Inf.
Chief Judicial Officer,
for Chief Civil Affairs Officer.

SECRET

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SECRET

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512,

CMS/CF/thh

G-5 010.2

21 May 1944

SUBJECT: Transmittal of Record in Ustica Case

TO : Headquarters, Allied Control Commission, APO 394
(Attention: Chief Legal Officer)

1. By letter of even date with this, subject "Ustica Case", you were requested to present to the proper Italian authorities, with a view to prosecution in the local courts, the various offences reflected in the record of the so-called Ustica Case. Accordingly, there is herewith transmitted the record and other papers in that case.

2. The record and papers referred to are those transmitted (without being itemized) by Colonel Pollock's letter ACC/4083/1/L of 5 March 1944, - less record of the "Ustica War Crimes Commission" marked "Colonel Pollock 2 copy", which was returned to you under cover of our letter HCS 010.2 of 30 April 1944. The itemized list is as follows:

Record: "Ustica Commission - Original"

Record: "Ustica Case (Copy No. 1)"

"Ustica Commission. Memorials presented on behalf of the defendants at the conclusion of the evidence."

DOWN GRADED
TO
UNCLASSIFIED

Col. Int.
Chief Judicial Officer.
for Chief Civil Affairs Officer.

- Fazio Vincenzo (12/11/1943)
- Di Mauro Gaetano
- Pace Mario
- Luigi Foresta
- Pietro Rando (2 copies)
- (Branciamore Giuseppe), Gurrieri Giuseppe;
- (Guerzoni Paolo); Faconti Alfiero; Roberti
- Matteo; Stanzione Raffaele; Nava Antonino.
- Pecoraino Lorenzo
- Giordano Vincenzo
- Fazio Vincenzo (20 Dicembre 1943)
- Gargano (2 copies)
- "Osservazioni alla Testimonianza N. 60" (2 copies)
- "Osservazioni alla Testimonianza N. 59" (2 copies)
- "Osservazioni alla Testimonianza N. 53" (2 copies)

SECRET

0434

SECRET

3B

"Al Ministero dell'Interno....."
"La difesa di Giordano"
"La difesa di Pecoraino Lorenzo....."
".....Per Fazio Vincenzo....."
"Rilievi in difesa di Castiglione Angelo"
"Difesa Gargano e Di Mauro".

- Envelope: "Ustica Commission. Exhibits D 1 to D 5 and Exhibits D 14, 15 and 16"
- Envelope: "Ustica Commission. Exhibit D 11"
- Envelope: "Ustica Commission. Morning Reports. Exhibits 2 and 4."
- Envelope: "Ustica Commission. Exhibit 3"
- Envelope: "Ustica Commission. Exhibits 5 and 6 and 9 and 40".
- Envelope: "Ustica Commission. Exhibit 38"
- Envelope: "Ustica Commission. Exhibits 41, 42 and 43"
- Envelope: "Ustica Commission. Exhibits 47, 48, 49 and 50"
- Envelope: "Ustica Commission. Exhibits 53, 54, 55, 56, 57, 59 and 60"

3. It is requested that receipt of the above be acknowledged.

4. After they have been made available to the Italian authorities for use in the prosecution of the cases, the record and related papers should eventually be returned to the Judge Advocate, as requested in his indorsement on the routing slip transmitted to the Allied Control Commission under cover of letter MGS 010.2 of 30 April 1944.

DOWN GRAD
TO
UNCLASSIFIED

Col. Int.
Chief Judicial Officer.
Incls: for Chief Civil Affairs Officer.
as listed above

CHARLES M. SPOFFORD,
Colonel, G.S.C.,
Asst. Chief of Staff, G-5.

28

Record of Commission
2nd Copy
File of Judge Advocate
MGS/4096/L
SECRET

SECRET

(2A)

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

GMS/CF/as

G-5: 010.2

21 May 1944

SUBJECT: Ustica Case

TO : Headquarters,
Allied Control Commission, APO 394.
(Attention: Chief Judicial Officer)

1. Receipt is acknowledged of the letters of 7 May and 16 May on the above subject - file ACC/4096/L. It appears that the Chief Legal Officer finds it practicable to carry out the recommendation of the Acting Theater Judge Advocate, transmitted under cover of our letter MGS: 010.2 of 30 April 1944. You are now requested to proceed accordingly, and to that end there is being transmitted, under separate cover, the record of testimony taken on commission by the Allied Control Commission, and related papers.

2. Attention is drawn to the Judge Advocate's request that the record be returned to his office after it has been made available to the Italian authorities in connection with their prosecution of the Ustica defendants.

3. The Chief Legal Officer's observations in paragraph 3 of the letter of 7 May, responding to paragraph 4c of the Judge Advocate's indorsement, have been brought to the attention of the Judge Advocate. He waives his request for complete transcripts, but does ask that he be furnished either a summary of each case or a copy of the Italian court's proces verbal of its proceedings.

**DOWN GRADED
TO
UNCLASSIFIED**

CHARLES M. SPOFFORD
Colonel, G.S.G.
Asst. Chief of Staff, G-5-27

Col. for
Chief Judicial Officer,
for Chief Civil Affairs Officer.

SECRET

0433

Spencer

4096

1A

HEADQUARTERS
REGION 3, ALLIED CONTROL COMMISSION
APO 394, U.S. ARMY

Subject: Ustica Case

To : C L O, ACC

Naples, 14 May 1944.

1. In reference to the communication under the above subject matter MSG: 101.2 dated 30 April 1944 a study has been made of the Italian Penal Code and procedure.

2. The Italian penal statutes are sufficiently broad to cover the facts alleged; and ample punishment is provided in the event of a finding of guilt.

3. There is appended hereto, for convenience, a list of the pertinent provisions of the Italian Penal Code, translated into English.

4. The various acts of assault and torture charged against the accused who were state employees working at the Penal Colony of USTICA, are covered by Articles 608 and 582 as further defined by Articles 583 and 585 (with aggravated penalty as defined by Article 61, Sec. 2 and by Article 64).

5. Acts which constituted an abuse of authority by any of the public officials against the persons detained at the Penal Colony are covered by Article 608.

6. The diversion of food intended for the prisoners and internees, to various members of the prison administration and to the black-market and the alleged trafficking in prison commodities by the colony officials are covered by Articles 314, 317 and perhaps, by Article 315 of the Italian Penal Code.

26

... would provide
... event of his conviction.

7. The accused GARGANO and DI MAURO come within the purview of Articles 251 and 252 which provide criminal penalties for the violation of supply contracts with the government in time of war. Article 252 provides for a heavier penalty where fraud is committed.

It should be noted that Article 251 provides to include the case of non-fulfilment of Magazzini, total or partial, due to culpable negligence.

LEGAL SUB-COMMISSION ACC.

8. If a causal connection can be established between a specific act of any of the accused and the death of any prisoner, a charge of murder, as it is defined by Article 575, might be sustained. The evidence already adduced, however, offers little hope of successful prosecution under this provision.

9. Article 112, Sec. I (as implemented by Article 64), increases the penalty by one third, where more than 5 persons participate in any offence. The definitions contained in these provisions are extremely broad, and presumably these articles will be applied if any five or more of the accused are convicted before an Italian Court.

10. The facts alleged against the accused FORESTA, the director of the Penal Colony of Ustica, are covered by the definition of aggravating circumstances, set forth in Sections II and III of Article 112, and would provide for heavier punishment in the event of his conviction.

EDMUND L. PALMERI
Maj. A.U.S.

LEGAL SUB-COMMISSION ACC.

A P P E N D I X

LIST OF APPLICABLE PROVISIONS OF THE ITALIAN PENAL CODE.

(In the order in which they are referred to in the accompanying memorandum)

ARTICLE 509.

(Abuse of Authority towards persons Arrested or Detained)

A public official who subjects to rigorous measures not allowed by the law a person arrested or detained, of whom he has the custody, even temporarily, or who is entrusted to him in execution of an order of the competent authorities, shall be punished with penal servitude up to 30 months.

The same punishment shall apply if the act is committed by another public official vested, by reason of his office, with any authority over the person in custody.

ARTICLE 582.

(Personal Injury)

Whoever causes a personal injury to another from which results a malady of body or mind shall be punished with penal servitude from 3 months to 3 years.

If the malady has a duration not exceeding 10 days, and there is no concurrence of any of the aggravating circumstances contemplated in Articles 583 and 585, the crime shall be punishable on action being initiated by the injured party.

ARTICLE 583.

(Aggravating Circumstances)

The personal injury is grave, and penal servitude from 3 to 7 years shall be inflicted -

- (1) If the act results in an illness which places in danger the life of the injured person, or an illness or incapacity to attend to ordinary occupations for a period exceeding 40 days.
- (2) If the act produces the permanent weakening of a sense or an organ.

- (3) If the injured party is a pregnant woman and the act results in acceleration of the birth.
The injury is very grave, and penal servitude from 6 to 12 years shall be inflicted, if the act results in-
- (1) An illness certainly or probably incurable.
 - (2) The loss of a sense.
 - (3) The loss of a limb, or a mutilation which renders the limb useless, or the loss of the use of an organ or of the capacity to procreate, or a permanent and serious difficulty in speech.
 - (4) Deformation, or the permanent disfigurement of the face.
 - (5) The miscarriage of the injured person.

ARTICLE 585.

(Aggravating Circumstances)

In the cases contemplated in Articles 582, 583 and 584, the penalty shall be increased by one-third to one-half if there is a concurrence of any of the aggravating circumstances contemplated in Article 576; and it shall be increased up to one-third if there is a concurrence of any of the aggravating circumstances contemplated in Article 577, or if the act is committed with weapons or with corrosive substances.

For the purposes of the penal law the following are understood by ARMS:-

- (1) Those which discharge and all others the natural use of which is to inflict personal injury.
- (2) All instruments capable of inflicting, the carrying of which is forbidden by law absolutely, or without a justified motive.

Explosive materials and asphyxiating or blinding gas are assimilated to arms.

ARTICLE 584. +

(Preterintentional Homicide)

Whoever, by acts directed to commit one of the crimes contemplated in Articles 581 and 582, causes the death of a human being, shall be punished with penal servitude from 10 to 15 years.

+ Quoted because of reference in Article 585.

ARTICLE 581 +

(Blows)

Whoever strikes another person, if a malady of body or mind does not result from the act, shall be punished, on action being initiated by the injured party, with penal servitude up to 6 months or with a fine up to 3,000 lire.

The above provision shall not apply when the law deems the violence to be a constitutive element or an aggravating circumstance of another offense.

ARTICLE 576 + +

(Aggravating Circumstances: Death Penalty)

The penalty of death shall apply if the act contemplated in the preceding Article is committed -

- (1) With the concurrence of any of the circumstances specified in No. (2) of Article 61.
- (2) Upon an ascendant or descendant, when there is a concurrence of any of the circumstances specified in Nos. (1) and (4) of Article 61, or when a method of poisoning or other insidious means is used or when there is premeditation.
- (3) By a person hiding from justice, in order to evade arrest, capture or imprisonment, or to procure means of subsistence during concealment.
- (4) By an associate in delinquency, in order to evade arrest, capture or imprisonment.
- (5) In the act of committing any of the crimes contemplated in Articles 519, 520 and 521.

For the purposes of the penal law an individual is considered to be hiding from justice when he fulfills the conditions specified in No. (6) of Article 61.

ARTICLE 577. + +

(Other Aggravating Circumstances: Penal Servitude for Life)

Penal Servitude for life shall be inflicted when the act contemplated in Article 575 is committed -

+ Quoted because of reference in Article 584.

+ + " " " " " " 585

- (1) Upon an ascendant or descendant.
- (2) By means of poisonous substances, or by other insidious means.
- (3) With premeditation.
- (4) With a concurrence of any of the circumstances specified in Nos. (1) and (4) of Article 61.

The punishment shall be penal servitude from 24 to 30 years if the act is committed upon a spouse, brother or sister, adoptive father, mother or child, or a relative by marriage in the direct line.

ARTICLE 575.
(Homicide)

Whoever causes the death of a human being shall be punished with penal servitude for not less than 21 years.

ARTICLE 519. +
(Carnal Violence)

Whoever, with violence or threats, compels anyone to have carnal intercourse shall be punished with penal servitude from 5 to 10 years.

A person is liable to the same penalty if he has carnal relations with anyone who, at the time of the act -

- (1) Had not attained the age of 14 years.
- (2) Had not attained the age of 16 years, when the guilty person is the ascendant or the guardian, or another person to whom the minor is entrusted for the purpose of treatment, education, instruction, supervision or custody.
- (3) Was mentally deranged, or was not able to resist by reason of conditions of mental or physical inferiority²¹ even though the latter is independent of the act of the guilty party.
- (4) Had been deceived, owing to the guilty party impersonating another individual.

+ Quoted because of reference in Art. 576, Sec. 5.

ARTICLE 520. +

(Carnal Intercourse committed with Abuse of the Capacity of Public Official)

A public official who, apart from the cases contemplated in the preceding Article, has carnal relations with an arrested or detained person of whom he has the custody by reason of his office, or with a person who is entrusted to him in execution of an order of the competent authority, shall be punished with penal servitude from 1 to 5 years.

The same penalty shall apply if the act is committed by another public official vested, by reason of his office, with any kind of authority over any of the aforesaid persons.

ARTICLE 521. +

(Violent Acts of Lust)

Whoever, employing the means or availing himself of the conditions specified in the two preceding Articles, commits upon anyone acts of lust other than carnal connexion, shall be liable to the punishments ^{prescribed} in the said articles, reduced by one-third.

Any person who, employing the means or availing himself of the conditions specified in the two preceding Articles, compels or induces anyone to commit the acts of lust on himself, on the body of the guilty person or on others, shall be liable to the same penalties.

ARTICLE 61.

(Ordinary Aggravating Circumstances)

The following circumstances aggravate the offence, when they are not constitutive elements thereof or special aggravating circumstances:-

+ Quoted because of reference in Article 576, Sec. 5.

- + (1) Having acted for base or futile motives.
- + (2) Having committed the offence in order to commit or conceal another offence, or to obtain or secure for one's self or others the product or the benefit or the price of or impunity from another offence.

+ + +

- + (4) Having used inhuman means or having acted cruelly towards persons.

+ + +

- + (6) When the guilty person has committed the offence during the time when he was wilfully evading the execution of a warrant or order of arrest or capture or imprisonment issued for a previous offence.

+ + +

- (9) Having committed the act with abuse of the powers or with violation of the duties inherent in a public office or a public service, or in the capacity of minister of religion.

+ + +

ARTICLE 64.

(Increase of Punishment in the Case of a Single Aggravating Circumstance)

When there occurs an aggravating circumstance, and the increase of punishment is not fixed by the law, the punishment which should be inflicted for the offence committed shall be increased up to one-third.

Nevertheless, the punishment of penal servitude to be applied by reason of the increase may not exceed 30 years.

+ Quoted because of reference in Article 576.

ARTICLE 314.

(Pecculation)

A public official or a person entrusted with a public service who, having by reason of his office or duty the possession of money or other movable article belonging to the public administration, appropriates it or diverts it to his own or to some other's profit, shall be punished with penal servitude from 3 to 10 years and with a fine of not less than 1,000 lirs.

The conviction entails perpetual interdiction from public offices. Nevertheless if, by reason of extenuating circumstances, penal servitude for a period of less than 3 years is inflicted, the sentence shall entail temporary interdiction.

ARTICLE 315.

(Malversation to the Prejudice of Private Individuals)

A public official or a person entrusted with a public service who appropriates, or in any manner diverts to his own profit, or to the profit of a third party, money or any movable article not belonging to the public administration, of which he has possession by reason of his office or duty, shall be punished with penal servitude from 3 to 8 years and with a fine of not less than 1,000 lirs.

The provisions of the second paragraph of the preceding Article shall apply.

ARTICLE 317.

(Extortion)

A public official who, abusing his capacity or his duties, compels or induces anyone to give or to promise wrongfully, to himself or to a third person, money or

other benefit, shall be punished with imprisonment from 4 to 12 years and with a fine of not less than 3,000 lire.

The provisions of the second paragraph of Article 314 shall apply.

ARTICLE 251.

(Failure to Execute Contracts for Supplies in Time of War)

Whoever, in time of war, does not carry out, wholly or in part, the obligations arising from a contract for the supply of commodities or work concluded with the State or other public body or with an undertaking carrying on public services or services of public necessity, for the requirements of the armed forces of the State or of the population, shall be punished with penal servitude from 3 to 10 years and with a fine equal to three times the value of the article or the work which should have been supplied and, in any case, not less than 10,000 lire.

If the non-fulfilment, total or partial, of the contract is due to culpable negligence, the penalties shall be reduced to one-half.

The same provisions shall apply to sub-contractors, brokers and representatives of suppliers, whenever in breach of their contractual obligations, they have caused the failure of a supply contract.

ARTICLE 252.

(Fraud in Furnishing Supplies in Time of War)

Whoever, in time of war, commits a fraud in the execution of supply contracts or in the performance of

the other contractual obligations indicated in the preceding Article, shall be punished with penal servitude for not less than 10 years and with a fine equal to five times the value of the article or the work which ought to have been supplied and, in any case, not less than 20,000 lire.

ARTICLE 112.

(Aggravating Circumstances)

The punishment to be inflicted for the offence committed shall be increased -

- (1) If the number of the persons co-operating in the offence is 5 or more, unless the law directs otherwise.
- (2) In the case of individuals who, even apart from the cases contemplated in the two following numbers, have promoted or organised co-operation in the offence, or have directed the action of the persons who co-operated in that offence.
- (3) In the case of individuals who, in the exercise of their authority, direction or supervision, have caused persons subject to them to commit the offence.
- + (4) In the case of individuals who, apart from the case contemplated in the preceding Article, have caused a person under 18 years of age, or one in a state of mental infirmity or deficiency, to commit the offence.

The increases of punishment prescribed in Nos. (1) to (3) of the present Article shall apply even if any one of the persons participating in the act is not chargeable or punishable.

+ Quoted because of reference in Article 112, Sec. 2.

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
A.P.O. 512
LEGAL SUB-COMMISSION

AMG/4096/L

30th November 1943

Subject:- Priority of Cable

To:- I.B.S. (for Col. Sears or Executive Officer)

May attached telegram please be given the highest possible priority
as it is a matter in which Chief of Staff AFM is personally concerned.

E. GUTERDOCK

Brigadier,
Acting Chief of Staff.

15

IBS FOR FARGO - 760

20th November 1943

URGENT

FREEDOM FOR MGS

CANCEL OUR AMG SEVEN FIVE THREE OF NINETEENTH NOVEMBER x PART TO FREEDOM
FOR MGS FROM IBS FOR FARGO CITE AMG SVEN SIX NOUGHT PART x HEARINGS OF
COMMISSION ADJOURNED x COLONEL POLLOCK ON HIS WAY TO AFHQ

14

IBS FOR FARGO - 753

19th November, 1943.

PRIORITY

FREEDOM FOR MGS

COLONEL POLLOCK IS PRESIDENT OF THE JUSTICE COMMISSION & PAREN TO FREEDOM
 FOR MGS FROM IBS FOR FARGO FROM GUETERBOCK CITE AMC SEVEN FIVE THREE PAREN &
 CHANGE OF PRESIDENT WOULD CAUSE MOST UNFORTUNATE IMPRESSION AND LENGTHY
 ADJOURNMENT WOULD BE MOST UNFAIR ON WITNESSES AND ADVOCATES WHO HAVE BEEN
 ASSEMBLED FROM WIDE AREA & REQUEST POLLOCK REMAIN HERE TILL HEARING OF
 COMMISSION CONCLUDED & COLONEL CHANLER ARRIVES WITH GENERAL HOLMES IN TWO
 OR THREE DAYS & REFERENCE YOUR NUMBER TWO SEVEN TWO ONE DATED EIGHTEENTH
 NOVEMBER

1st Jacklin, arrived early of 19th

Brigadier E. Gueterbock, }
 Acting Chief of Staff. } Originator.

13

S E C R E T

181337A NR. 2171 SECRET PRIORITY IBS -3791
FROM: CINC 190828A
TO: FILPOT. FLAMPO AND FARGO. IMFO IBS

Present hearing being conducted of USTICA matter may continue.
but limited to basis of combined Chiefs of Staff Directive outlined
in message 398 of October 29th. Imperative that no publicity, be
given these proceedings under any circumstances and that no PWB
recordings be made. Destroy any having already been made. Take no
action pending further instructions in Caiazzo case or similar incidents
beyond segregating and holding prisoners of war implicated either
as principals or witnesses from fellow prisoners and each other. Our
1781 of November 16th should be disregarded. Reference FARGO message
C-34 of November 15th current year.

(CRYPTO FREEDOM PARAPHRASES ACTION FILPOT, FLAMPO AND FARGO INFORMATION
IBS, DISTORE, DISTWG AND SEVENTH ARMY SIGNED CINC CITING MEAB AND
NAGAP.)

DISTRIBUTION:

ACC

PWB (ACTION)

CO

Intell

12

181822A NR 2721

PRIORITY

IBS 3783

FROM: EISENHOWER

190802A

TO: FARGO

Pollock, Colonel will report to this Headquarters forthwith.

(TO FARGO SIGNED EISENHOWER CITE FIMIS)

DIST:

ACC (ACTION)

CO

0452

161908A NR 1781

SECRET PRIORITY

IB3 3656

FROM: CINC

170800A

TO: CO IBS-FARGO

Confidential

In accordance with directive of Deputy Chief of Staff no publicity of any action other than procedures indicated by paraphrase of combined Chiefs of Staff Directive in message 3983 of 29th October will be conducted by agencies under your control. Utmost secrecy will be maintained and all matters reference to persons being classified and held as War Criminals will be referred to this Headquarters for appropriate instruction. Repeat no publicity under any circumstances is to be given to these matters. No FWD recordings will be permitted and any made will be destroyed. Particular reference is made to case. All matters pertaining thereto will be forwarded here for necessary onward processing.

(SIGNED CINC CITE MACAP FHEAB TO CO FILIPOT AND CO IBS FOR ACTION. PLAMES G. FARGO. FIVE ARMY AND SEVEN ARMY FOR INFORMATION)

DISTRIBUTION:

INTELL(ACTION)

ACC(ACTION)

CO

FM

FWD

CEB & SEC

7TH ARMY

10

*Day ~~the~~ Commission began**SPARE*

15th November 1943

IES FOR FARGO - 690

PRIORITY

SECRET

TO: FREEDOM FOR MGS FOR FAIRMAN

PWB MISUNDERSTOOD POSITION x NO TRIAL IS BEING HELD x PAREN FROM IBS
FOR FARGO FROM POLLOCK TO FREEDOM FOR MGS FOR FAIRMAN REF NUMBER NOUGHT
FIVE DATED THIRTEENTH NOVEMBER CITE AND SIX NINE NOUGHT PAREN x COMMISSION
IS SITTING IN ACCORDANCE WITH CCS DIRECTIVE TO TAKE EVIDENCE ONLY x PWB
WILL HAVE REPRESENTATIVE AT TRIAL WHO WILL PREPARE REPORT AND TAKE
RECORDINGS FOR SUBMISSION TO PWB AT AFHQ x NO RELEASE UNTIL MATTER APPROVED
BY THEM x STRONGLY URGE THAT PUBLICITY BE GIVEN TO THIS MATTER AS APPARENT
 FAILURE OF ALLIES TO TAKE ACTION AGAINST CRIMINALS OF USTICA TYPE IS
 CAUSING MUCH ADVERSE COMMENT

9

MSG NR. 905
MSG CEN NO.
TO FARGO FOR CHANLER

PRIORITY
131752A
140140A
140146A

MESSAGE BAKER DASH NINE ONE ONE CAMEL FROM IBS RPT ITEM BAKER SUGAR
TO PWB RPT PETER WILLIAM BAKER HERE STATES ~~WAS~~ CRIMINALS TRIAL BEFORE
AMG RPT AMG COURT BEGINS MONDAY FIFTEEN NOVEMBER AND THAT PRESS CMA RADIO
AND NEWSWIRE COVERAGE IS PLANNED PAREN TO FARGO FOR CHANLER SIGNED EISENHOWER
CITE FHMS RPT FHMS PAREN PWB RPT PETER WILLIAM BAKER HERE UNDERTAKES TO
KILL MESSAGE AND INVESTIGATE X PLEASE FIND WHAT HAPPENED AND PREVENT ANY HARMFUL
ACTION X TRIAL NOW RPT NOW WOULD VIOLATE CCS RPT CHARLIE CHARLIE SUGAR DIRECTIVE
IN THREE NINE EIGHT THREE OF TWO NINE OCTOBER CMA AND PUBLICITY BUILD UP MIGHT HAVE
SERIOUS REPERCUSSIONS X REPORT

SECRET

0 4 5 5

HQ ACC-AMG
Public Relations Office

14 Nov. 43

FOR IMMEDIATE RELEASE AT AFHQ PRO THROUGH MGS PRO

CRIMINAL INVESTIGATION OF EXCEPTIONAL INTERNATIONAL INTEREST BEING HELD BY ACC-AMG IN SICILY BEGINNING TOMORROW FIFTEEN NOVEMBER. SIXTEEN FORMER PRISON OFFICIALS OF FASCIST REGIME ARE CHARGED WITH VIOLATIONS OF LAWS AND USAGES OF WAR BY ILL-TREATMENT OF CIVILIANS INTERNED ON USTICA ISLAND AND HOMICIDE OF AT LEAST THIRTEEN JUGOSLAV CIVILIANS INTERNED THERE IN COURSE OF YEAR BEFORE ALLIED INVASION OF SICILY.

FACT THAT CASE INVOLVES CHARGES OF WAR CRIMES ON PART OF AXIS ADHERENTS GIVES IT INTERNATIONAL IMPORTANCE. CHARGES MIGHT LEAD TO ONE OF FIRST WAR GUILT TRIALS PROVIDED FOR IN MOSCOW AGREEMENTS BETWEEN BRITAIN, UNITED STATES, AND RUSSIA.

DEFENDANTS BEING CHARGED WITH TORTURE, CRUEL AND UNUSUAL FORMS OF PUNISHMENT INCLUDING "POMPA", WHICH CONSISTED IN TYING MAN DOWN ON TABLE AND FORCING WATER INTO HIM UNTIL HE COLLAPSED OR DIED.

HEARINGS TO BE HELD IN HISTORIC BUILDING ONCE OCCUPIED BY GARIBOLDI, GREAT EXPONENT OF ITALIAN LIBERTY.

SECRET - RECEIVED IN CODE

RECEIVED AT
ISLAND BASE SECTION

MSG NR 8048

MSG GEN NR

TO FARGO FOR CHATLER

CLASSIFICATION: PRI

TIME OF RECEIPT: 081346

TIME OF RECEIPT: 081719

TIME DECODED : 081725

SENTHENS COME TO PALERMO TUESDAY PD PAREN TO FARGO FOR CHATLER SIGNED
EISENHOWER CITE FINGS PAREN PD IN COMPLIANCE WITH BAKER DASH TWO SEVEN
TWO CITE HEADQUARTERS AC RPT AC FIVE TWO SEVEN CMA TWO STENOGRAPHERS
TESTED BY HIM COME PROBABLY WEDNESDAY ON TEMPORARY DUTY

RECEIVED IN CODE.

S E C R E T.

SEARS FOR AMG - 551

3rd November 1943

CONFIDENTIAL

ROUTINE

WE ARE TAKING NECESSARY ACTION PAREN FROM SEARS FOR AMG FROM CHANLER
TO FILPOT FOR AMG FOR ROWE REF NUMBER PA OBLIQUE ONE EIGHT NINE DATED
SECOND NOVEMBER CITE AMG FIVE FIVE ONE PAREN UNDER CONCLUDING PARAGRAPH
OF AFHQ SIGNAL THREE NINE EIGHT THREE OF TWENTY NINE OCTOBER REGARDING
USTICA CASES

0458

SEARS FOR ANGOT - 527

30th October 1943

CONFIDENTIAL

PRIORITY

AFHQ FOR MGS FOR FAIRMAN

in after by SP.

WE WILL TAKE TESTIMONY OF PROPOSED WITNESSES FOR PROSECUTION IN USFICA CASE x
PAREN FROM SEARS FOR ANG FROM CHANLER TO AFHQ FOR MGS FOR FAIRMAN CITE HQ AC
FIVE TWO SEVEN PAREN x WE WILL ALSO INFORM ACCUSED THAT THEY ARE NOT REQUIRED
TO GIVE EVIDENCE BUT IF THEY WISH TO DO SO OR TO CALL WITNESSES THEIR TESTIMONY
WILL ALSO BE RECORDED x PLEASE SEND MEMOS TO ACT AS COMMISSIONER AND TWO
COMPETENT COURT STENOGRAPHERS AS NONE ARE AVAILABLE HERE AND HEARING MAY LAST
UP TO THREE WEEKS

301630A ORIG NR PA/109 ROUTINE

IRS 2867

FROM: FILFOT FROM AMG FROM ROWE

021630A

TO: SEARS FOR AMG FOR CHAMBER

REFERENCE AFHQ SIGNAL 3983 cite PLINGS OF 29 OCTOBER. PLEASE
CONFIRM YOU WILL TAKE ALL NECESSARY ACTION UNDER CONCLUDING PARAGRAPH.

DISTRIBUTION:

AMG(ACTION)

CC

SECRET

IMPORTANT
US CIPHER MESSAGE
IN

FOLIO NO: 09946.

DATE 29 OCT '43

FROM: AFHQ SIGNED EISENHOWER
TO: ICS FOR SEARS FOR AMG FOR CHANLER
15 ARMY GROUP FOR AMG FOR ROWE
ORIG NO: 3983 CITE FILMSTOO 09946?
THI NIL
TOR 0245A3/0

PROCEDURE UNDER PARA 7. POLITICAL. OF POLICY DIRECTIVE OF JUNE 1st
HAS NOW BEEN ELABORATED BY CCS. AT SAME TIME ANSWERING MAP
176 ON JUSTICAL CASE
CCS DIRECTIVE AS PARAPHRASED? FOLLOWS.

TRIAL BY MILITARY TRIBUNAL WILL NOT BE HELD IN CASE OF PERSONS
SUSPECTED OF WAR CRIMES.

THEY WILL BE HELD IN CUSTODY AWAITING
UNITED NATIONS DECISION REGARDING THEIR DISPOSAL.

YOU WILL COLLECT ALL AVAILABLE INFORMATION
ABOUT SUSPECTS DETAINED AND ABOUT WAR CRIMES FOR WHICH THEY ARE
HELD, AND WILL FORWARD ALL SUCH INFORMATION TO THIS HEADQUARTERS,
WHICH WILL TRANSMIT TO CCS.

ALLIED GOVERNMENTS IN LONDON ON OCTOBER 20TH
DECIDED UPON SETTING UP UNITED NATIONS WAR CRIMES COMMISSION.

PLAN IS THAT THIS COMMISSION WILL REVIEW
AND RECORD ALL INFORMATION SUBMITTED BY GOVERNMENTS AS TO WAR
CRIMES COMMITTED BY ENEMIES AGAINST UNITED NATIONS NATIONALS, AND
WILL REPORT TO GOVERNMENT CONCERNED WHAT CASES APPEAR SUPPORTED
BY SUFFICIENT EVIDENCE.

COMMISSION ALSO TO CONSIDER MEANS TO REACH
COMMON BASIS AS TO TYPE OF TRIAL COURT, APPLICABLE LAW, PROCEDURE
FOR CUSTODY AND SURRENDER.

WHERE ITALIAN COMITS CRIME AGAINST ITALIAN
NATIONAL IT WOULD NOT PROPERLY BE REGARDED AS WAR CRIME AND SO
WOULD NOT COME WITHIN SCOPE OF THE COMMISSION.

PERSON SO ACCUSED SHOULD BE GIVEN TO ITALIAN
COURTS TO BE TRIED.

CRIMES AGAINST MILITARY FORCES DURING PERIOD
OF OCCUPATION REMAIN, AS USUAL, TRIAL BY MILITARY TRIBUNAL.

TO EFFECTUATE FOREGOING/CCS DIRECTIVE YOU
WILL ESTABLISH PROCEDURE FOR TAKING TESTIMONY AS ON COMMISSION
WITH APPROPRIATE PROVISION FOR PRESENCE OF ACCUSED, OPPORTUNITY TO
HAVE COUNSEL AND TO CROSS EXAMINE, PREPARATION AND AUTHENTICATION OF RECORD.

AMCOT

4 ACTION

SMC 0400A/30
TT 0500A/30
KW

*no suggestion of other than
public opinion*

SEARS FOR AMGOT - 498

26 OCTOBER 1943.

SECRET

URGENT

AFHQ FOR FIDMS FOR FAIRMAN

USTICA PRISON OFFICIALS NOT WAR CRIMINALS IN ACCEPTED SENSE BUT COMMON MURDERERS FOR FINANCIAL GAIN X PAREN FROM SEARS FOR AMGOT FROM CHANLER TO AFHQ FOR FIDMS FOR FAIRMAN REFERENCE YOUR NUMBER TWO NOUGHT FOUR SIX CITE A GOT FOUR NINE EIGHT PAREN X FACT A NUMBER OF VICTIMS WERE JUGOSLAVS INCIDENTAL TO PRINCIPAL CRIME BUT GIVES OUR COURTS JURISDICTION PENALTIES UNDER ITALIAN CODE BEING WHOLLY INADEQUATE X POLITICAL IMPORTANCE OF SPEEDY TRIAL BY AMG CONSIDERABLE AS FACTS ARE WELL KNOWN HERE AND WE ARE BEING ASKED WHAT WE ARE DOING ABOUT IT BY BOTH LOCAL AND HOME PRESS X OVER ONE FIVE NAUGHT WITNESSES WILL BE CALLED AND IN ANOTHER WEEK MOST OF THEM ESPECIALLY JUGOSLAVE WHO ARE ANXIOUS TO FIGHT WILL BE UNAVAILABLE X ANY DELAY WILL MAKE THE TRIAL IMPOSSIBLE. X URGENTLY REQUEST RECONSIDERATION.

0 4 6 2